



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Motor Vehicle Dealer License
of D & F Auto Group, Inc.

Case No. DOT-19-0012

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

On April 12, 2019, the Division of Hearings and Appeals received a request for hearing from the Department of Transportation's Division of Motor Vehicles on the summary suspension and revocation of the motor vehicle retail dealer license of D & F Auto Group, Inc., pursuant to Wis. Stat. § 218.0116(4)(c). Pursuant to due notice, a hearing was held at the State Office Building, 819 North 6th Street, Milwaukee, Wisconsin, on Monday, April 22, 2019. Kristine M. Kerig, Administrative Law Judge, presided.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are identified as follows:

Petitioner Wisconsin Department of Transportation, by

Attorney Daniel Graff
Assistant General Counsel, Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
Madison, WI 53707

Respondent D & F Auto Group, Inc., by

Darnell Cruse, Registered Agent
1001 South 18th Street
Milwaukee, WI 53204

The Administrative Law Judge (ALJ) issued a Proposed Decision in this matter on May 9, 2019. On May 23, 2019, the Department filed comments in support of the Proposed Decision. No objections to the Proposed Decision were received. The Proposed Decision is adopted as the final decision in this matter.

ISSUES FOR HEARING

Whether the Respondent, D & F Auto Group, Inc., engaged in odometer fraud, engaged in title fraud, engaged in unconscionable practices, fraudulently represented material particulars and violated Wisconsin legal requirements by failing to pay required title and registration fees and then failing to pay the supplemental bond assessed in light of those indications of financial

irresponsibility or insolvency, and if one or more of these violations is proven, whether revocation of D & F Auto Group, Inc.'s motor vehicle retailer license is authorized.

FINDINGS OF FACT

1. D & F Auto Group, Inc. (D & F) is the holder of motor vehicle dealer license MV5031, which the Wisconsin Department of Transportation Division of Motor Vehicles (DOT) seeks to revoke through this action and has summarily suspended. DOT also seeks affirmation of that summary suspension.
2. D & F had a primary place of business at 5730 West Lincoln Avenue, West Allis, Wisconsin.
3. The owners of D & F are identified as Florencio Mondragon Velarde Cruse and Sherrilyn Harris-Simmons, who have a mailing address of 1001 South 18th Street, Milwaukee, Wisconsin.
4. Darnell Cruse is the registered agent for D & F, and according to the Department of Financial Institutions' records, his registered mailing address is the business address for D & F. (Exhibit 1.)
5. DOT filed its complaint with the Division of Hearings and Appeals (DHA) on April 12, 2019. On April 15, 2019, DHA issued a Notice of Hearing which scheduled the hearing for April 22, 2019, at 9:30 a.m.
6. DOT presented documents and testimony which indicated that D & F, through its agents, purchased a 2002 Jeep Liberty Sport from Rawhide, Inc., at a Wisconsin auction with 275,227 miles on January 25, 2018 and subsequently sold it to an individual purchaser in Illinois on February 6, 2018, at which time the Wisconsin Assignment of Certificate of Title indicated the vehicle had 130,412 miles. (Testimony of Michael Domke, Exhibit 7, pp. 4, 15.) The Wisconsin Assignment of Certificate of Title document had also been altered as to the history, in that where it once reflected 275,214 miles when it was transferred to Rawhide, Inc. in 2017, it now reflected 75,214 miles. (Testimony of Mr. Domke, Exhibit 7, pp. 4, 15.)
7. Mr. Cruse submitted two competing documents about this same 2002 Jeep Liberty, a motor vehicle purchase contract which indicated that he personally sold this vehicle, on behalf of D & F, to Car Star Auto Sales in Chicago, Illinois, on February 1, 2018, and the vehicle had 275,301 miles, and he also attached a Wisconsin Wholesale Buyer's Guide documenting the transaction. (Exhibit 104.)
8. DOT presented documents and testimony which indicated that D & F, through its agents, purchased a 2006 Buick Rendezvous from Zimbrick Chevrolet at a Wisconsin auction with 231,757 miles on June 26, 2018 and subsequently sold it to an individual purchaser in Illinois on July 21, 2018; at the time of that sale, the Wisconsin Assignment of Certificate of Title indicated the vehicle had 101,757 miles when D & F purchased it (the word "Exempt" is written on the line for the transfer to this buyer.) (Testimony of Mr. Domke,

Exhibit 8, pp. 3, 14.) The Wisconsin Assignment of Certificate of Title document had also been altered as to the history, in that where it once reflected 231,722 miles when it was transferred to Zimbrick Chevrolet earlier in 2018, it now reflected 101,722 miles. (Testimony of Mr. Domke, Exhibit 8, pp. 3, 14.)

9. Mr. Cruse submitted a competing Motor Vehicle Purchase Contract regarding this Buick Rendezvous reflecting that he personally sold this vehicle to Auto Fin Auto in Mount Prospect, Illinois, on June 30, 2018, on behalf of D & F, and at that time, the mileage was 231,750. (Exhibit 109.)
10. DOT presented documents and testimony which indicated that D & F, through its agents, purchased a 2006 GMC Envoy from Lynch Chevrolet of Mukwonago at a Wisconsin auction with 248,567 miles on February 1, 2018 and subsequently sold it to an individual purchaser in Wisconsin on February 26, 2018; the Wisconsin Assignment of Certificate of Title history always simply listed the mileage as "Exempt." (Testimony of Mr. Domke, Exhibit 9, pp. 4, 6, 15.) The individual who sold the vehicle to Lynch Chevrolet completed the Odometer Disclosure Statement, indicating mileage of 248,531. (Testimony of Mr. Domke, Exhibit 9, p. 7.) The individual who purchased the vehicle from D & F completed a Wisconsin DOT Purchaser Questionnaire, which indicated that she found the car through an advertisement on the Chicago Craigslist site, and the seller told her the car had "around 158,000 miles" and that was the mileage shown on the odometer. (Testimony of Mr. Domke, Exhibit 9, pp. 18-19.)
11. Mr. Cruse did not submit any competing documents regarding this vehicle, and it does not appear in D & F's Dealer Record Book. (Exhibit 111.)
12. DOT presented documents and testimony which indicate that D & F, through its agents, purchased a 2006 Honda Accord from Bergstrom Appleton Buick, at a Wisconsin auction with 266,935 miles on August 20, 2018 and subsequently sold it to an individual purchaser in Illinois on September 8, 2018. (Testimony of Mr. Domke, Exhibit 10, pp. 4, 13.) The Wisconsin Assignment of Certificate of Title document has been altered as to the history, in that where it once reflected 266,831 miles when it was transferred to Bergstrom earlier in 2018, it now reflects 146,831 miles, and all other mileage fields simply read "Exempt." (Testimony of Mr. Domke, Exhibit 10, pp. 6, 13.)
13. Mr. Cruse submitted a competing Motor Vehicle Purchase contract regarding this 2006 Honda Accord, indicating that he personally sold this vehicle on behalf of D & F to A&M Auto Sales in Whiting, Indiana on May 5, 2018 with 266,939 miles, and he also submitted a Wisconsin Wholesale Buyer's Guide documenting that transfer. (Exhibit 105.) May 5, 2018 predates the date that D & F acquired this vehicle at auction, and at which Bergstrom acquired this vehicle from the original seller, which both occurred three months later in August. (Exhibit 10, pp. 4, 6.)
14. DOT presented documents and testimony which indicate that D & F, through its agents, purchased a 2006 Lexus RX 400H from Zimbrick, Inc., at a Wisconsin auction with 192,886 miles on June 26, 2018 and subsequently sold it to an individual purchaser in Illinois on September 22, 2018, at which time the last reported mileage was 102,886. (Testimony of Mr. Domke, Exhibit 11, pp. 3, 15.) The Wisconsin Assignment of

Certificate of Title document has been altered as to the history, in that where it once reflected 192,848 miles when it was transferred to Zimbrick earlier in 2018, it now reflects 102,848 miles, and where it once reflected 192,886 at the time of transfer to D & F, it now reflects 102,886. (Testimony of Mr. Domke, Exhibit 11, pp. 5, 15.)

15. Mr. Cruse submitted a competing Motor Vehicle Purchase contract regarding this 2006 Lexus RX 400H, indicating that he personally sold this vehicle on behalf of D & F to Auto Fin Auto in Mount Prospect, Illinois on October 20, 2018, with 192,890 miles. (Exhibit 108.)
16. DOT presented documents and testimony which indicate that D & F, through its agents, purchased a 2008 Cadillac DTS from Palmen Buick GMC Cadillac, Inc., at a Wisconsin auction with 207,034 miles on June 12, 2018 and subsequently sold it to an individual purchaser in Illinois on July 9, 2018, at which time the last reported mileage was 087,034. (Testimony of Mr. Domke, Exhibit 12, pp. 3, 16.) The Wisconsin Assignment of Certificate of Title document has been altered as to the history, in that where it once reflected 207,032 miles when it was transferred to Palmen earlier in 2018, it now reflects 087,032 miles, and where it once reflected 207,034 miles at the time of transfer to D & F, it now reflects 087,034 miles. (Testimony of Mr. Domke, Exhibit 12, pp. 5, 16.)
17. Mr. Cruse submitted a competing Motor Vehicle Purchase contract regarding this 2008 Cadillac DTS, indicating that he personally sold this vehicle on behalf of D & F to Auto Fin Auto in Mount Prospect, Illinois on September 11, 2018, with 207,040 miles, and he also attached a Wisconsin Wholesale Buyer's Guide with the same date. (Exhibit 106.)
18. DOT presented documents and testimony which indicate that D & F, through its agents, purchased a 2011 Ford Edge from Palmen Motors, Inc., at a Wisconsin auction with 210,714 miles on August 19, 2018 and subsequently sold it to an individual purchaser in Illinois on July 9, 2018 with a reported mileage of 91,200. (Testimony of Mr. Domke. Exhibit 13, pp. 4, 13.) The Wisconsin Assignment of Certificate of Title document has been altered as to the history, in that where it once reflected 210,693 miles when it was transferred to Palmen earlier in 2018, it now reflects 090,693 miles, and where it once reflected 210,714 miles at the time of transfer to D & F, it now reflects 090,714 miles. (Testimony of Mr. Domke, Exhibit 13, pp. 6, 13.)
19. Mr. Cruse submitted a competing Motor Vehicle Purchase contract regarding this 2011 Ford Edge, indicating that he personally sold this vehicle on behalf of D & F to Auto Fin Auto in Mount Prospect, Illinois on August 18, 2018, with 210,780 miles, and he also attached a Wisconsin Wholesale Buyer's Guide with the same date. (Exhibit 107.)
20. DOT presented documents and testimony which indicate that D & F, through its agents, purchased a 2012 Buick Verano from Ballweg Chevrolet Buick, Inc., at a Wisconsin auction with 192,311 miles on October 9, 2018 and subsequently sold it to an individual purchaser in Illinois on November 9, 2018, with a reported mileage of 103,213. (Testimony of Mr. Domke, Exhibit 14, pp. 3, 12.) The Wisconsin Assignment of Certificate of Title document has been altered as to the history, in that where it once reflected 192,246 miles when it was transferred to Ballweg earlier in 2018, it now reflects 102,246 miles, and where

it once reflected 192,311 miles at the time of transfer to D & F, it now reflects 102,301 miles. (Testimony of Mr. Domke, Exhibit 14, pp. 5, 12.)

21. Mr. Cruse submitted a competing Motor Vehicle Purchase contract regarding this 2012 Buick Verano indicating that he personally sold this vehicle on behalf of D & F to Auto Fin Auto in Mount Prospect, Illinois on November 1, 2018, with 192,380 miles, and he also attached a Wisconsin Wholesale Buyer's Guide with the same date. (Exhibit 110.)
22. Mr. Cruse testified that he could not explain the discrepancies in these eight vehicles' odometers between the time that D & F purchased them and the time that individual consumers registered titles, which indicated they had purchased the vehicles from D & F. Mr. Cruse testified that he had sold each of these vehicles to the dealers for which he provided documentation with accurate odometers, and he does not know what happened to the vehicles or their odometers after that. (Testimony of Darnell Cruse.)
23. Michael Domke, Chief of the DOT Dealer and Agent Section in the Division of Motor Vehicles, testified that D & F came to his attention as a result of an alarming number of bad payment notices, and he identified a series of enforcement letters sent to D & F from the Accounting Unit. (Exhibit 3.) Some of these letters were directed to D & F Cleaning Service, which shared a business address with D & F in addition to the similar name. (Testimony of Michael Domke, Exhibit 3, pp. 6-9.)
24. Mr. Domke testified that these unpaid fees were in fact fees which D & F collected from customers for registration fees, in order to process title and registration as a part of the service provided by the dealer, and which are required to be remitted to the DOT. However, D & F had not remitted a large number of these fees, or they had done so, and checks were returned with insufficient funds. (Testimony of Mr. Domke, Exhibit 4.)
25. On November 19, 2018, Mr. Domke sent D & F a warning letter, advising of the delinquency, which was then \$4,328.50 when returned check fees were included, having already suspended D & F's ability to make electronic payments, and ordering D & F to post a supplemental \$50,000 surety bond no later than November 20, 2018. D & F was also ordered to remit all delinquent payments by November 26, 2018. D & F was instructed to respond in writing by December 3, 2018. (Testimony of Mr. Domke, Exhibit 5.)
26. Mr. Domke testified that D & F did not respond to this letter as required within the timeframe set forth, so he sent an email directed to Florencio Cruse, the listed co-owner of D & F, at D & F's business email address, to follow up to his letter on December 10, 2018. (Testimony of Mr. Domke, Exhibit 6.)
27. Mr. Domke testified that in response to that email, Darnell Cruse (rather than Florencio Cruse) called him and requested a payment plan for the delinquent payments. Mr. Cruse told Mr. Domke that an employee had thrown the first letter into a drawer, but Mr. Cruse was looking for a way to pay. Mr. Domke testified that he denied that request based on D & F's history, as this was not the first time they had been in this situation. Mr. Domke's November 19, 2018 letter acknowledges that D & F was previously contacted about delinquent checks in January of 2018, and at that time, they established a payment plan and

remedied the delinquencies before their electronic processing was disabled. (Testimony of Mr. Domke, Exhibit 5.)

28. As of January 10, 2019, the total of all unpaid fees plus returned check penalties was \$5,147.00. Among the checks that was returned for insufficient funds, which had been submitted for the registration and title fees, was a check from the D & F Cleaning Service account signed by Darnell Cruse. (Exhibit 4.)
29. Mr. Domke testified that D & F has not paid any of the delinquent fees or provided the supplemental bond that were ordered to date. (Testimony of Mr. Domke.)
30. Mr. Cruse offered a bond reinstatement notice from the SureTec Insurance Company, for a bond in the amount of \$50,000 which was reinstated effective December 17, 2018, and he testified that he has always had a bond and it is not due until the beginning of the year. (Testimony of Mr. Cruse, Exhibit 112.)

DISCUSSION

Mr. Cruse does not appear to contest the allegations related to delinquent payment of title and registration fees under Wis. Admin. Code § Trans 141.07. Further, while he claims to have procured the required bond, he did not establish that it was the supplemental bond that the DOT required in response to the delinquent fees. Additionally, the bond that Mr. Cruse provided failed to meet the November 30, 2018 deadline that was required by the DOT. (Exhibits 5, 112.) It is possible that D & F reinstated a bond that all dealers must maintain under Wis. Stat. § 218.0114(5)(a), while failing to procure the supplemental bond required pursuant to Wis. Admin. Code § 140.027(2). Mr. Domke testified that DOT was never notified that D & F obtained the required supplemental surety bond, and even in the unlikely event that the reinstatement notice in Exhibit 112 related to the supplemental surety bond, on its face it shows that it was not secured timely.

Mr. Cruse does dispute the allegations related to odometer fraud and title fraud, offering Exhibits 104-110 in response to DOT's Exhibits 7-14, and testifying that he sold the vehicles in question to other dealers with accurate mileage, rather than the individual purchasers documented in DOT's exhibits with altered mileage, and if tampering occurred, it must have occurred at those dealers' hands. I am not persuaded by Mr. Cruse's attempt to provide evidence that D & F did not or could not have committed these violations. Portions of Exhibits 7-14 constitute admissions by a party opponent pursuant to Wis. Stat. § 908.01(4)(b)(4) (statements by the party's agent or servant concerning a matter within the scope of the agent's or servant's agency or employment, made during the existence of the relationship). Each of Exhibits 7-14 contain what Mr. Domke identified as a block ticket, essentially a receipt from various auctions around Wisconsin, and each of those block tickets contains D & F's business address, as well as the name and signature of the D & F employee who approved the purchase. At the contested case hearing, Mr. Cruse did not dispute the accuracy of these documents, nor did he dispute that D & F had purchased these high mileage vehicles, through its agents in this manner. These documents appear to be the purchase agreements for these vehicles, and D & F maintained these records as required by Wis. Admin. Code § Trans. 138.04(1)(e), and D & F's agents' signatures on these documents constitute agreement to the terms of the purchase, including the price, make, model and condition of the vehicle, specifically the odometer reading, which was plainly stated on each block ticket. I conclude that these documents

are the operative purchase documents because D & F maintained these documents in a “deal jacket” for all but one of the vehicles along with the corresponding original title, which also reflected accurate mileage. (Exhibit 7, p. 2, Exhibit 8, p. 2, Exhibit 9, p. 2, Exhibit 10, p. 2¹, Exhibit 11, p. 2, Exhibit 12, p. 2, Exhibit 13, p. 2, Exhibit 14, p. 2.)

Similarly, Exhibits 7-14 contain admissions by a party opponent, pursuant to Wis. Stat. § 908.01(4)(b)(4), which document the tampered mileage of the vehicles, while said vehicles were still in the possession of D & F. Exhibits 7, 8, and 10-14 all contain copies of Application for Title filed in Illinois, received from the Illinois Secretary of State, and the accompanying Wisconsin Assignment of Certificate of Title documents, each of which reflects the signatures of D & F agents in multiple locations on the document (for the purchase, and then the sale of the vehicle), as well as mileage which does not match that which appears in earlier versions of those documents in the same exhibit. The vehicle in Exhibit 9 was titled in Wisconsin rather than Illinois, and the Assignment of Title document never had any mileage written on it—only the word “exempt” in each space, though it does contain multiple signatures from D & F employees. There is also a questionnaire from the buyer in this instance, in which she provides more detail about purchasing the vehicle from a Chicago Craigslist site. (Exhibit 9, p. 18.) The absence of any altered mileage on this document, and the only documentation of the tampered mileage being the hearsay statement of the purchaser on her Purchaser Questionnaire means that documentation related to this vehicle only serves as further evidence of D & F’s pattern of predatory behavior, much like the remaining documents in all of the other exhibits, such as the Carfax report for each vehicle and DOT Investigator Joel Ingebrigtsen’s Investigation Report on each vehicle. While these documents are hearsay, and would not constitute substantial evidence standing alone to provide a basis for a finding fact, they are corroborated by the non-hearsay of the admissions by a party opponent, that is, the purchase agreements, accurate assignments of title and altered assignments of title, that are signed and completed by agents of D & F. See *Gehin v. Wisconsin Group Ins. Bd.*, 278 Wis.2d 111, (Wis. 2005). As a result, I find that DOT’s evidence is far more compelling than D & F’s, which frankly suffers serious credibility issues.

Exhibit 103 is dated June 13, 2019, which is a date in the future; Mr. Cruse testified that this was a mistake. Both of the documents in Exhibit 105 (which purportedly document D & F selling this vehicle to another dealer rather than a private citizen) are dated May 5, 2018, which is more than three months before D & F purchased the vehicle at issue at auction. (Exhibit 10, p. 4.) Mr. Cruse’s suggestion that multiple dealers in Illinois and Indiana all tampered with odometers on vehicles that D & F sold to those dealers, then fraudulently altered the Wisconsin Assignment of Title documents, not only as to the mileage but also, apparently, to make it appear that D & F was the other party to the sale rather than that dealer, not to mention that the transaction between that dealer and D & F was omitted from the Wisconsin Assignment of Title document, all strains belief.

I find that DOT has met its burden with regard to each of the allegations.

¹ D&F’s deal jacket did not contain the signed block ticket and original title in Exhibit 10; DOT obtained copies of those documents from the Central Wisconsin Auto Auction.

CONCLUSIONS OF LAW

1. The Division has the authority to hear contested cases and issue decisions on behalf of the DOT, pursuant to Wis. Stat. § 227.43(b)(g), and, particularly, in matters involving suspensions or revocations pursuant to Wis. Stat. § 218.0116(4)(c).
2. Motor Vehicle Dealer's licenses are governed by Wis. Stat. §§ 227.51 and 218.0116.
3. The burden of proof, also known as the quantum of evidence, for the hearing decision shall be by the preponderance of the evidence. Wis. Admin. Code § HA 1.17(2).
4. The DOT bore the burden of proof in this case. Wis. Admin. Code § HA 1.12(3)(b).
5. The DOT properly determined that D & F Auto Group, Inc. engaged in odometer fraud, engaged in title fraud, engaged in unconscionable practices, fraudulently represented material particulars and violated Wisconsin legal requirements by failing to pay required title and registration fees and then failing to pay the supplemental bond assessed in light of those indications of financial irresponsibility or insolvency.
6. The DOT met its burden, by a preponderance of the evidence, to demonstrate that it properly summarily suspended the motor vehicle dealer license of D & F Auto Group, Inc., pursuant to Wis. Stat. §§ 227.51(3) and 218.0116(4).
7. The DOT met its burden, by a preponderance of the evidence, to demonstrate that revocation of D & F Auto Group, Inc.'s motor vehicle dealer license is warranted.

ORDER

WHEREFORE IT IS HEREBY ORDERED, that the summary suspension of the motor vehicle dealer license of D & F Auto Group, Inc., is AFFIRMED and that the motor vehicle dealer license of D & F Auto Group, Inc., is REVOKED.

Dated at Madison, Wisconsin on May 31, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Brian Hayes
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.